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TMLF File No. 141986

6
7 Attorneys for Objecting Secured Creditor, DEUTSCHE BANK NATIONAL TRUST COMPANY,
8 AS CERTIFICATE TRUSTEE ON BEHALF OF BOSCO CREDIT II TRUST SERIES 2010-1
9

10 UNITED STATES BANKRUPTCY COURT

11 WESTERN DISTRICT OF WASHINGTON

12 In re

13 NAZARIO HERNANDEZ DBA BIG
14 MOUNTAIN LANDSCAPING AND
15 MAINTENANCE,

16 Debtor.

Case No.: 18-13392-TWD
Chapter: 13

OBJECTION TO CONFIRMATION OF
DEBTORS' CHAPTER 13 PLAN

Date: November 07, 2018
Time: 9:30 a.m.
Crm.: 8106
Judge: Hon. Timothy W. Dore
Place: 700 Stewart St., 8th Floor
Seattle, Washington 98101

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21 Secured Creditor, DEUTSCHE BANK NATIONAL TRUST COMPANY, AS
22 CERTIFICATE TRUSTEE ON BEHALF OF BOSCO CREDIT II TRUST SERIES 2010-1
23 ("Secured Creditor"), hereby objects to confirmation of the Chapter 13 plan filed by Debtor
24 NAZARIO HERNANDEZ DBA BIG MOUNTAIN LANDSCAPING AND MAINTENANCE
25 ("Debtor"). In support of its objection, Secured Creditor alleges as follows:

26 1. On August 29, 2018, Debtor filed the instant voluntary petition under Chapter 13 of
27 the Bankruptcy Code as Case No. 18-13392-TWD.

1 2. On or about August 16, 2006, Debtor made, executed and delivered to WMC
2 Mortgage Corp. a Promissory Note (“Note”) in the principal sum of \$67,600.00. Secured Creditor is
3 in constructive possession of the Note and is entitled to enforce the document.

4 3. On or about August 16, 2006, Debtor made, executed and delivered to WMC
5 Mortgage Corp. a deed of trust ("Deed of Trust") granting Mortgage Electronic Registration
6 Systems, Inc. (“MERS”), as nominee for WMC Mortgage Corp., a security interest the residential
7 real property commonly known and described as 31445 West Lake Morton Drive Southeast,
8 Covington, WA 98042 (the “Property”), which is more fully described in the Deed of Trust.

9 4. On or about November 28, 2011, the beneficial interest of MERS in the Deed of
10 Trust was sold, assigned and transferred to Secured Creditor (“Assignment”).

11 5. The obligation under the Note and Deed of Trust is in default commencing December
12 1, 2010, due to the Debtor’s failure to make monthly payments to Secured Creditor. As of the date
13 of filing, the prepetition arrearage claim was \$40,249.20.

14 6. On August 29, 2018 the Debtor filed the Petition, which states the Property is
15 Debtor’s primary residence (*see*, Dkt. No.1, Petition, Part 5); on the same date Debtor filed Schedule
16 A, which states the Property has a value of \$416,879.00 (*see*, Dkt. No. 1). Debtor did not provide
17 any documentation or information to show how that value was derived.

18 7. On September 14, 2018, the Debtor filed the Chapter 13 Plan as Docket No. 9
19 (“Plan”). The Plan does not provide for Secured Creditor’s lien.

20 8. Debtor relies on the hope that Secured Creditor’s lien can be avoided, and makes
21 provision for no payment of Secured Creditor’s pre-petition arrears based on this premise.

22 9. Debtor’s Plan is clearly not feasible and is inadequately funded under 11 U.S.C.
23 §1325(a)(6), which requires Debtor to provide “proof” that Debtor will be “able to make all the
24 payments under the plan and to comply with the plan. In order to keep creditors “at bay” a debtor
25 must have a present and future ability to make payments under the terms of a confirmable plan. *In*
26 *re Street*, 17 B.R. 787, 788 (E.D.Ill 1982). *See also, In re Sun Valley Newspapers*, 171 B.R. 71, 75
27 (9th Cir.BAP 1994). Hope is not enough. *Id.*

1 10. The Debtor's proposed Chapter 13 Plan fails to provide for maintenance of the
2 ongoing post-petition monthly payments as required by 11 U.S.C. Section 1322(b)(5) and under *In*
3 *re Gavia*, 24 B.R. 573 (9th Cir. BAP 1982) because Debtor does not propose to tender post-petition
4 payments to Secured Creditor.

5 11. Under 11 U.S.C. § 1325(a)(6) the Court shall confirm the Plan only if the Debtor
6 demonstrates an ability to make all payments under the Plan and otherwise perform on the
7 provisions of the Plan. Debtor's Plan is based upon the hope of a lien avoidance using an unknown
8 source for valuation of the Property – a value that Secured Creditor contends is artificially low in
9 light of the information Secured Creditor has regarding the Property's value, and Debtor makes no
10 provision for repayment of Secured Creditor's claim if a lien avoidance is unsuccessful.

11 12. Secured Creditor reserves the right to raise further objections at the time of the
12 confirmation hearing.

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1 Any Chapter 13 Plan proposed by Debtor must provide for and eliminate the objections
2 specified above in order to be feasible and to provide adequate protection to this objecting creditor.
3 It is respectfully requested that confirmation of Debtor's proposed Chapter 13 Plan be denied.

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5 WHEREFORE, Secured Creditor prays as follows:

6 1. That confirmation of the Debtor's proposed Chapter 13 Plan be denied.
7 2. For attorneys' fees and costs incurred herein.
8 3. For dismissal of the Chapter 13 proceeding. And,
9 4. For such other relief as this Court deems proper

10 Respectfully submitted,

11 DATED: 10/18/2018

THE MORTGAGE LAW FIRM, PLC

12 BY: /s/ Renee M. Parker

13 Renee M. Parker, Esq.,
14 Attorneys for DEUTSCHE BANK
15 NATIONAL TRUST COMPANY, AS
16 CERTIFICATE TRUSTEE ON BEHALF OF
17 BOSCO CREDIT II TRUST SERIES 2010-1

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10 In re:

11 NAZARIO HERNANDEZ DBA BIG
12 MOUNTAIN LANDSCAPING AND
13 MAINTENANCE,

14 Debtor.

15 Case No.: 18-13392-TWD
16 Chapter: 13

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19 CERTIFICATE OF SERVICE

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21 Subject Property Address:
22 31445 West Lake Morton Drive Southeast
23 Covington, WA 98042

24 I am employed in the County of Riverside, State of California. I am over the age of
25 eighteen (18) and not a party to or interested in the above-entitled matter. I am an employee of The
26 Mortgage Law Firm, PLC, and my business address is 27455 Tierra Alta Way, Suite B, Temecula,
27 California 92590. On October 18, 2018, I served the following documents described as:
28 Objection to Confirmation of Debtors Chapter 13 Plan:

■ MAIL: by placing a true copy(ies) of the document(s) in a sealed envelope(s) for collection and mailing in the outgoing mail in my office for deposit in the United States mail, addressed as shown below. I am readily familiar with the business practice at my place of business for collection and processing of outgoing mail with the United States Postal Service. On the same day that the outgoing mail is placed

1 for collection and mailing, it is deposited in the ordinary course of business with the
2 United States Postal Service, in a sealed envelope with postage fully prepaid.
3

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- 5 OVERNIGHT DELIVERY: by enclosing, true copies of the documents in a sealed
envelopes or package provided by an overnight delivery carrier addressed as shown
below. I placed the envelope or package for collection and overnight delivery, with
postage fully prepaid, at an office or a regularly utilized drop box of the overnight
delivery carrier or the envelope or package was picked up from my firm by the
overnight delivery carrier.
- 6 ■ ELECTRONICALLY: Pursuant to CM/ECF System, registration as a CM/ECF user
constitutes consent to electronic service through the Court's transmission facilities. The
Court's CM/ECF systems sends an e-mail notification of the filing to the parties and
counsel of record listed above who are registered with the Court's CM/ECF system.
7

8 FEDERAL: I declare that I am employed in the office of a member of the bar of this
9 court at whose direction the service was made.

10 Said document(s) was/were served on the following persons:

<u>Debtor</u> Nazario Hernandez 31445 W Lake Morton Dr SE Kent, WA 98042	<u>Debtor's Counsel</u> Jacob D DeGraaff VIA CM/ECF: henrydegraaffps@jubileebk.net
<u>Chapter 13 Trustee</u> Jason Wilson-Aguilar VIA CM/ECF: courtmail@seattlech13.com	<u>United States Trustee</u> VIA CM/ECF: USTPRegion18.SE.ECF@usdoj.gov

17 I declare under penalty of perjury that the foregoing is true and correct. Executed on
18 October 18, 2018, at Temecula, California.
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20 /s/ Lily Porkalob
21 Lily Porkalob
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